BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AVISTA CORPORATION d/b/a AVISTA UTILITIES, Respondent.	DOCKETS UE-240006 & UG-240007 (Consolidated)

POST-HEARING BRIEF OF COMMISSION STAFF

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I. INTRODUCTION

1 Avista filed this general rate case (GRC), proposing a rate plan with incremental revenue requirement increases, as of the company's rebuttal, of $42.9 million and $16.8 million for electric and natural gas service, respectively, for rate year one and $69.3 million and $4.0 million for electric and natural gas, respectively, for rate year two. Those revenue requirement numbers are largely the product of two things: (1) the company's request for a 10.4 percent return on equity (ROE), and (2) for electric operations, a novel adjustment that incorporates roughly $29 million into Avista's net power expense and its Energy Recovery Mechanism (ERM) baseline to account for "forecast error."

2 The Commission should reject the company's proposed rate plan and treat this as a traditional rate case. It should also: (1) approve a 9.5 ROE, rather than the unjustified 10.4 percent proposed by the company; (2) reject the company's proposal to eliminate the deadbands built into its Energy Recovery Mechanism (ERM) and accept Staff's proposal to modify the ERM's dead and sharing bands; (3) reject the company's unfair and unreasonable forecast error adjustment; (4) order the company to incorporate Climate Commitment Act (CCA) allowance costs into its dispatch logic and require the company to submit its compliance costs for prudence review on an annual basis; (5) accept Staff's miscellaneous adjustments and rate design proposals; and (6) provisionally allow Avista's distribution capital investments into rates, subject to two conditions meant to cure the deficiencies in its filing. These adjustments produce incremental revenue requirement increases of $59.2 million for electric and $10.8 million for natural gas service.

II. THE STANDARDS FOR RATESETTING AND MULTIYEAR RATE PLAN

3 To promote the public interest, the Legislature enacted what are now Titles 80 and 81 RCW to govern the provision of services in Washington by "business[es] affected with at public interest,"[1] including electric and natural gas companies.[2] Those laws require such companies to charge rates that are "fair to both customers and the utility; just . . . in that the rates are based solely on the record in" the proceeding "following the principles of due process of law; reasonable . . . in light of the range of potential outcomes presented in the record; sufficient . . . to meet to the financial needs of the utility to cover its expenses and attract capital on reasonable terms"[3] and consistent with the tenets of energy justice.[4] To the extent that the Commission finds after a hearing initiated by a complaint against proposed rates that they do not meet that standard, it may fix legally compliant rates by order.[5]

4 Every electric or natural gas general rate case must include "a proposal for a multiyear rate plan."[6] The Commission may approve, reject, or modify that proposal depending on the requirements of the public interest.[7] The non-exclusive list of public interest factors the Commission may consider includes "environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent that such factors affect" a public service company's "rates, services, and practices."[8]

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[1] *State v. Kuykendall*, 137 Wash. 602, 607-08, 243 P. 834 (1926); RCW 80.01.040; RCW 80.01.010.
[2] RCW 80.04.010(23).
[3] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Dockets UE-191024, UE-190750, UE-190929, UE-190981, & UE-180778, Order 09, 11 ¶ 28 (Dec. 14, 2020); *see* RCW 80.28.010, .020.
[4] *Wash. Utils. & Transp. Comm'n v. Cascade Nat. Gas Co.*, Docket UG-210755, Order 09, 19-20 ¶¶ 59-60 (Aug. 23, 2022) ("Cascade").
[5] RCW 80.28.020.
[6] RCW 80.28.425(1); *see* WAC 480-07-595(1).
[7] RCW 80.28.425(1); *see Cascade* at 9 ¶ 29.
[8] RCW 80.28.425(1).

III. MULTIYEAR RATE PLAN POLICY

5 The parties contest three policy issues related to Avista's proposed multiyear rate plan (MYRP). They are: (1) should the Commission approve a MYRP here, (2) should the Commission require Avista to report certain metrics, and (3) how should the Commission review plant in the context of MYRPs? The answers are: (1) no, (2) yes, and (3) on a portfolio basis with a six-month review period.

A. The Commission Should Reject the Rate Plan and Treat this as a Traditional Rate Case

6 As noted above, companies must file a MYRP with each general rate case, but the Commission need not accept the proposal.[9] The Commission should reject the one proposed here by Avista, for three reasons. First, denying the rate plan here would give effect to language in RCW 80.28.425 related to the timing of rate-plan and clean-energy-implementation-plan (CEIP) filings. Second, moving Avista to a different filing cycle will ease the administrative crush on the Commission and interested parties, making for a better ratemaking process. Third, rejection of a MYRP here would allow the Commission to evaluate Avista's next MYRP in light of the equity report it will make in two months.

7 Initially, RCW 80.28.425(9) provides that the Commission "shall align, to the extent practical, the timing of approval of a multiyear rate plan of an electrical company . . . with the clean energy implementation plan of the electrical company filed pursuant to RCW 19.405.060." The Legislature's use of "'shall'" there "is presumptively imperative and operates to create a duty."[10] That duty is to time the approval of an electric utility's rate plans and

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[9] RCW 80.28.425.

[10] *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994) (internal quotation omitted). Given that the Legislature used the word "shall" in conjunction with the term adjudicative proceeding, which *requires* a hearing before an agency enters an order, the APA evidences no legislative intent to use "shall" in a permissive sense.

CEIPs where practical, with "practical" in this context meaning "able to be done or put into action."[11]

8 Avista files two-year rate plans every two years, and it appears wedded to that cycle.[12] The problem is that, currently, this means that Avista files in even years. But Avista must file its CEIPs in odd years, with the next one due on October 1, 2025.[13] Those two series (even-year rate filings and odd-year CEIP filings) will never line up. Absent some action by the Commission, Avista will never put its CEIP and rate filings before the Commission at roughly the same time, despite the Legislature's command that it do so.

9 The solution is simple. The Commission can simply reject the MYRP here and treat Avista's filing as a traditional rate case. Doing so should prompt Avista to file a new rate case early next year. That will make the Commission's final order in the next rate case due around the time Avista's CEIP is ready for approval.

10 Avista contends that there is no reason to reject this MYRP because it has no CEIP costs at issue in this filing. Staff cannot see how that matters. What Staff attempts to do, and what the Legislature commands, is timing the approval of a MYRP with Avista's next CEIP.[14]

11 Avista also seems to argue that the Commission should not attempt to align its MYRP filings with its next CEIP because it will not acquire new resources before 2029. Staff cannot see how that matters either. The Legislature ordered the Commission to time the filings when practicable, not when Avista seeks to include new resources in rates.[15] Regardless, Avista does

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[11] Cambridge Dictionary, *available at* https://dictionary.cambridge.org/dictionary/english/practical (last visited Oct. 16, 2024).
[12] Kinney, Exh. KJC-4T at 25:8.
[13] WAC 480-100-640(1).
[14] Avista submitted its previous CEIP before the Legislature enacted the MYRP statute, so 2025 will present the Commission's first opportunity to time those filings.
[15] RCW 80.28.425(9).

have other CEIP costs, even if it claims that some of them are immaterial.[16] Aligning the filings will allow the Commission to review those costs for possible rate inclusion.

12 Further, rejecting Avista's MYRP would also eliminate the clustering of large, complicated filings at the Commission. As Staff notes, the two large, dual-fuel investor-owned utilities regulated by the Commission are currently filing MYRPs contemporaneously every two years.[17] The filings have become quite complicated. Realigning one of the filings to space the two out provides significant benefits in that it would allow the Commission and interested persons to spend more time on each.[18] Avista is the natural choice for this realignment given that it has a CEIP due in 2025 and PSE no longer does.[19]

13 Avista makes several arguments here. First, it contends that it would have been administratively easy to process its second rate year here, in this filing, because the information is already on file. But that argument cuts both ways: Avista already has the information it needs for the first year of the next MYRP, which will make for an easy next filing.

14 Second, Avista contends that rejecting this MYRP would somehow deny the company the "timely rate relief."[20] That argument is puzzling. The Commission's final order here will grant the company timely rate relief for the current filing. Avista has no statutory right to a second year of the rate plan,[21] nor does the rejection of the rate plan foreclose a new rate case early next year,[22] which would time the Commission's final order with consideration and approval of the company's CEIP. If the company declines to make such a filing, that would be its choice.

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[16] Bonfield, TR. at 334:10-336:5.
[17] Erdahl, Exh. BAE-1T at 7:10-19.
[18] Erdahl, Exh. BAE-1T at 7:16-19; see Christie, Exh. KJC-4T at 24:6-9.
[19] Erdahl, Exh. BAE-1T at 7:19-8:2.
[20] Christie, Exh. KJC-4T at 24:6-9.
[21] *See* RCW 80.28.425(1).
[22] Parcell, Exh. DCP-1T at 26:17-18.

15 Third, Avista contends that rejecting the second year of the rate plan "is contrary to the clear interest and purpose of the Rate Plan legislation, depriving utilities of the opportunity to put in place a longer rate period and plan accordingly."[23] There are two problems with that argument. Initially, Staff's recommendation does not involve a rejection of longer rate plans, but rather a shifting of Avista's filing of them. Assuming the Commission accepts Staff's recommendation, Avista's general rate case and CEIP filings would be synched, and Staff would have no reason to recommend any of the former. Further, Avista's invocation of the intent and purpose of the MYRP statute is ironic given that it is ignoring the plain text of the law, which requires timing filings along the lines recommended by Staff here, as discussed above.

16 Fourth, Avista contends that the financial community would view rejection of the second rate year here negatively. But the ratings agencies appreciate the benefits of MYRP plans.[24] Staff's recommendation does not represent a rejection of those benefits, but, as just mentioned, a shifting of the timing of Avista's filing.[25]

17 Fifth and finally here, Avista appears to indicate that pushing its filing out would show differential, and thus discriminatory, treatment of it in favor of PSE. To make that claim, Avista needs to show that it and PSE are similarly situated.[26] They are not.[27] The law defines PSE as a large combination utility subject to ESB 1589;[28] it does not so define Avista.[29] That

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[23] Christie, Exh. KJC-4T at 24:18-20.
[24] Vermillion, Exh. DPV-6X at 4.
[25] Parcell, Exh. DCP-1T at 6:4-11, 26:8-14.
[26] *State v. Manussier*, 129 Wn.2d 652, 672, 921 P.2d 473 (1996) (the state and federal equal protection clauses "guarantee that persons similarly situated with respect to the legitimate purpose of the law must receive like treatment.").
[27] Erdahl, Exh. BAE-1T at 7:19-8:2; Kinney, TR. at 105:23-106:2.
[28] Erdahl, Exh. BAE-1T at 7:19-8:2; Christie, TR. at 106:1-2.
[29] Erdahl, Exh. BAE-1T at 7:19-8:2; Christie, TR. at 105:23-25.

means that Avista has a CEIP due in the fall of 2025; PSE does not. Staff's recommendation recognizes that distinction.

18 The final consideration as to whether to approve a rate plan involves equity. Avista has provided little in the way of testimony about the progress it has made to ensure equity in its practices and rates in this GRC,[30] explaining that it has saved that for the equity compliance filing it will make at the end of this year.[31] If the Commission approves a two-year rate plan, it will go four years between meaningful looks at equity in Avista's operations in the company's rate cases. Given the Legislature's incorporation of equity into ratemaking[32] and the Commission's directive that equity take center stage in utility operations,[33] the Commission should not accept that kind of a suspension in reviewing Avista's equity practices. It should treat this case as a traditional rate filing and review Avista's practices in light of its equity compliance filing in the company's next rate plan filing next year.

B. The Commission Should Retain Certain Metrics

19 Avista proposes to reduce the metrics it reports from 92 to 48 through eliminating some and consolidating others. While largely accepting the Company's proposal, Staff recommends that the Commission order the company to keep four metrics[34] it seeks to eliminate and add an additional metric.[35] With regard to the four retained metrics, the Commission recently required PacifiCorp to report three of the four metrics,[36] so requiring Avista to do the same will allow

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[30] *See generally*, Thackston, Exh. JRT-1T at 11:13-25:15.
[31] Erdahl, Exh. BAE-1T at 16:10-15.
[32] *E.g.*, RCW 19.405.010(6); RCW 80.28.425(1).
[33] Cascade at 19-20 ¶ 59.
[34] Those metrics are: (1) "[t]otal revenue occurring through riders and associated mechanisms not captured in the MYRP," (2) "[p]ercentage of known low-income customers that participate in demand response," (3) "[[p]ercentage of utility-owned and supported EVSE by use case located within and or providing direct benefits and services to highly impacted communities and vulnerable populations," and the (4) "[c]ritical [i]nfrastructure [r]eport." Erdahl, Exh. BAE-1AT at 12:4-11.
[35] The new metric concerns "connection timelines for new service requests associated with new construction of single family and multi-family housing." Erdahl, Exh. BAE-1T at 13:5-7.
[36] Erdahl, Exh. BAE-1AT at 12:15-16.

interested persons to compare utility performance, and the fourth is "necessary to monitor the state of utilities' security."[37] And the new metric should allow the Commission to monitor both Avista's role in responding to the state housing crisis and its work on the clean energy transition.[38] The Commission should order Avista to report them.

20 In response, Avista argues that the Commission should eliminate or reject the metrics because it did not require their reporting in its recent policy statement on metrics.[39] That argument might have merit if the Commission intended the metrics selected in that policy statement as a ceiling, but it did not.[40] Instead, it considered them a floor, and invited parties to do exactly what Staff has done here: seek the reporting of different or additional metrics in rate proceedings.[41]

C. The Commission Should Continue to Review Capital Investment on a Portfolio Basis, but Provide the Parties With a Longer Review Period and Require Avista to use Separate Schedules for Provisional Capital

21 The last set of policy issues concerns the process used for provisional capital investments. Staff recommends that the Commission: (1) review Avista's provisional capital investments on a portfolio basis, (2) allow the parties a six-month review period for their retrospective review of the company's annual provisional plant filings, and (3) require Avista to use a separate tariff sheet for provisional capital investments.

22 Staff and Avista recommend reviewing the company's provisional capital investments on a portfolio basis. AWEC, citing administrative burden, claims that a portfolio-basis review

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[37] Erdahl, Exh. BAE-1T at 12:18-21.
[38] Erdahl, Exh. BAE-1T at 13:16-14:15.
[39] Bonfield, Exh. SJB-5T at 37:18-39:17.
[40] *In re Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making*, Docket U-210590, Policy Statement Addressing Initial Reported Performance Metrics, 4 ¶ 12 (Aug. 2, 2024); *see id.* at 5 ¶ 16.
[41] *See in re Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making*, Docket U-210590, Policy Statement Addressing Initial Reported Performance Metrics, at 5 ¶ 16.

incents utility overspending. Staff admits that companies may abuse this process, but, on the whole, believes that the benefits outweigh that possibility.[42] The Commission should provide companies with the flexibility to modify their investments to best fit their operational needs, and a portfolio review provides that.[43]

23 Related to Staff's recommendation that the Commission continue to review Avista's annual provisional capital filing on a portfolio basis, Staff recommends allowing the parties six months for that review. Doing so will allow the parties sufficient time to review the company's filing, which should alleviate some of AWEC's concerns about the crush of data involved with Avista's filing. As the company has no objections,[44] the Commission should accept the recommendation.

24 Finally, Staff recommends that the Commission require the company to use a separate tariff for the recovery of provisional capital. Doing so avoids the need to refund base rates and provides increased transparency,[45] two benefits that outweigh the concerns about administrative burden cited by Avista in defense of embedding provisional costs in base rates.[46]

IV. RATE OF RETURN

32 The Commission should authorize a 10-basis-point increase in Avista's authorized rate of return on equity (ROE) to 9.5 percent and maintain the current capital structure with a 48.50 percent equity ratio. The Commission should approve long-term cost of debt at 4.93 percent for 2024[47] and 4.96 percent for 2025.[48] Short-term cost of debt should be approved at the

[42] Erdahl, TR. at 401:4-21.
[43] Erdahl, TR. at 401:4-21.
[44] Andrews, Exh. EMA-6T at 11:7-9.
[45] Erdahl, Exh. BAE-1T at 10:12-21.
[46] Andrews, Exh. EMA-6T at 14:18-16:21.
[47] Unless otherwise noted, all calculations are performed as of December 31 of the stated year.
[48] Parcell, DCP-1T, at 3:9-16 (chart).

company's proposed 6.588 percent for 2024 and 5.58 percent for 2025.[49] Avista's short-term debt capital structure should be capped at 1.92 percent in 2024 and 1.88 percent in 2025.[50] This should result in a total weighted cost of debt of 7.18 percent in 2024 and 7.17 percent in 2025.[51] Should the Commission reject Staff's proposal for a single rate year and approve Avista's proposal for a two-year plan, the Commission should approve rate year 2026 as follows: long-term cost of debt should be approved at 4.99 percent[52] and short-term cost of debt should be approved at 5.343 percent,[53] with short-term debt capital structure capped at 1.80 percent.[54] This should result in a total weighted cost of debt of 7.19 percent in 2026.[55]

33 Avista has requested a full percentage point increase to its ROE in this case, from 9.4 percent to 10.4 percent, for both its electric and natural gas operations.[56] This proposal is a significant departure from recent ROEs approved by the Commission for Avista or its peer companies. It also runs explicitly counter to the Commission's longstanding principle of gradualism in rate cases. Avista, in support of this change, has offered little more than the rote justifications given in past rate cases before this Commission, amounting to no legitimate reasoning that would support the large increase in rates it requests.

34 Staff offers a much more measured proposal. As testified to by Staff witness Parcell, Staff's proposed ROE and capital structure are readily supported by available evidence concerning the state of the economy, the state of Avista, and the behavior of investors. Unlike

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[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*

Avista, Mr. Parcell's analysis also does not disregard Commission precedent and orders on prior Avista cases, gradualism, and analytical tools.

A. Legal Standard

35 A utility's cost of capital is the level of return it requires to service its debt and compensate its equity investors. The Commission calculates a utility's cost of capital, or rate of return, in keeping with the principles established in the Hope[57] and Bluefield[58] line of cases. To calculate a utility's cost of capital, the Commission must determine the cost of debt, the cost of equity, and the utility's capital structure.[59] A utility's rate of return (also known as the weighted cost of capital) is the sum of its cost of debt and its cost of equity, weighted according to the respective shares of debt and equity in the utility's capital structure.[60]

36 The cost of debt is typically computed based on the actual debt and cost rates of debt the utility has issued.[61] In contrast, the cost of equity is an estimate of the likely return an investor would require to invest in an enterprise with comparable risks.[62] To determine the return on equity, the Commission first identifies the range of possible returns reported by expert witnesses, and narrows that to a range of reasonable returns.[63] The Commission selects a specific ROE by weighing the results falling within that range and considering any other relevant evidence.[64]

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[57] *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1944).
[58] *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923).
[59] *See Hope*, 320 U.S. at 603.
[60] *See Bluefield*, 262 U.S. at 689-90.
[61] *Id.*
[62] *See Hope*, 320 U.S. at 602; *Bluefield*, 262 U.S. at 692.
[63] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-170033 & UG-170034, Order 08, 32, ¶ 90 (Dec. 5, 2017) (2017 PSE GRC Order).
[64] *Id.*

37 The capital structure used to calculate the rate of return may be a company's actual capital structure or a hypothetical capital structure.[65] The important principal is that the capital structure that the Commission uses for setting rates must balance the "economy" of lower cost debt with the "safety" of higher cost common equity.[66]

B. Avista's Requested Return on Equity Should Be Denied as Unsupported by Current Testimony and Inconsistent with Commission Policies

38 Avista's ROE request rests entirely on the assertions of Company witness McKenzie and his conclusions regarding market conditions. However, these conclusions are unsupported within Mr. McKenzie's testimony and contradictory with his past testimony before this Commission. Moreover, Mr. McKenzie requests the Commission significantly break with past Commission precedent concerning analytical models and prudential measures. As testified to by Mr. Parcell, these requests by Mr. McKenzie are simply not in line with the facts of this case or good public policy.

39 Mr. McKenzie presents five primary arguments for his ROE conclusions. First, that current trends in bond yields require "a significant increase in the returns on long-term capital demanded by investors."[67] Second, that the Company faces significant credit rating challenges.[68] Third, that "constructive regulation" demands a higher return to match company risk.[69] Fourth, that increased demands for plant and infrastructure development require

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[65] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-170485, UG-170486, & UE-171222, Order 07, 39, ¶ 109 (Apr. 26, 2018) (2017 Avista GRC Order); see also *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-040640 & UG-040641, Order 06, 13, ¶ 27 (Feb. 18, 2005) (2004 PSE GRC Order).
[66] 2004 PSE GRC Order at 13, ¶ 27.
[67] McKenzie, AMM-1T, at 7:6-7.
[68] *Id.* at 7:8-28.
[69] *Id.* at 7:29-33.

increased funding.[70] Fifth, that the Company's failure to earn its authorized ROE should cause the Commission to raise its ROE as a result.[71]

40 As has been shown in testimony by Staff, and as will be shown in this brief, these recommendations are quite simply in direct contrast to the objective facts presented by the parties in this case. Staff concedes that Avista is deserving of a moderate rate increase, as stated above. But the wildly inflated numbers presented by Mr. McKenzie are contrary to both Commission precedent and reasoned policy.

1. Bond yield trends are inapposite to the recommendations of Mr. McKenzie and support staff's recommendation.

41 Mr. McKenzie argues that the current trends in bond yields are supportive of an increase in ROE for Avista.[72] As shown by Mr. Parcell and Staff's exhibits,[73] this testimony is contradictory with current bond trends and primarily the result of Mr. McKenzie's continued use of the disfavored Capital Asset Pricing Model (CAPM). Not only that, but Mr. McKenzie's testimony also has questionable veracity considering he testified to the exact opposite stance in Avista's last rate case.

42 In evaluating Avista's requested ROE, one must first address the problem of the models chosen by Mr. McKenzie. Mr. McKenzie places a great deal of emphasis on his calculations using CAPM.[74] This model has been deemphasized by the Commission, and for good reason.[75] The purpose of any rate model is to do two things: (1) accurately measure the effect of market

[70] *Id.* at 7:34-38.
[71] *Id.* at 21:1-10.
[72] *Id.* at 9:13-18.
[73] Parcell, DCP-1T, at 16:20-17:2.
[74] "Because this is the dominant model for estimating the cost of equity outside the regulatory sphere, the CAPM provides important insight into investors' required rate of return for utility stocks, including Avista." McKenzie, AMM-1T, at 44:10-12.
[75] *Wash. Utils. & Transp. Comm'n v. Avista Corp*, Dockets UE-200900 & UG-200901, Order 08/05, 39 ¶ 100 (Sept. 27, 2021).

forces on required ROE; and (2) accurately model investor behavior in relation to the risk companies experience.[76] CAPM models as employed by Mr. McKenzie fail on both counts, "suffer[ing] from high variability due to the individual selection of variables" and introducing both bias and unreliability to what needs to be an objective process.[77] Mr. McKenzie does not stop at simply using CAPM, however. He then introduces even further bias by creating an "empirical" CAPM (ECAPM) by substituting actual betas with hypothetical ones for the chosen proxy group.[78] As testified to by Mr. Parcell, this is an arbitrary decision which serves only to skew an already flawed model, especially in the current rate environment.[79] Not only that, the ECAPM does not even properly measure investor behavior, since it assumes that an investor will arbitrarily insert a hypothetical beta in place of the measures actually taken from the company.[80] In short, any conclusions drawn from Mr. McKenzie's CAPM analysis should be discarded entirely, as done by Mr. Parcell.

43 Once the problem of Mr. McKenzie's irrelevant models is dealt with, one must then deal with the problem of the bond yield assumptions that Mr. McKenzie used in his other models. This falls into two categories: the effect that bond yields have on investor behavior, and the prediction of future trends in bond yields. First, Mr. McKenzie seems to assume an almost one to one relationship between investor requirements and bond yields.[81] Following a

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[76] *Id.* at 38 ¶ 98.
[77] *Id.* at 39 ¶ 100.
[78] McKenzie, AMM-1T, at 47:8-9.
[79] Parcell, DCP-1T, at 47:9-11. *See also Avista Corp*, Dockets UE-200900 & UG-200901, Final Order 08/05, at 38 ¶ 99 ("We assign little weight to McKenzie's ECAPM due to its replacement of actual betas from electric utilities with calculated, hypothetical betas that are biased, and also due to its inclusion of a size adjustment that would be appropriate for determining the ROE for an unregulated company. In addition, we afford little or no weight to McKenzie's risk premium model due to its inclusion of ROE data dating back to 1974 under market and regulatory circumstances that have little comparability and use of prospective bond yields as risk-free because actually realizing those future yields with higher rates has greater risk.").
[80] *Id.* at 47:13-15.
[81] McKenzie, AMM-15T, 9:4-6.

showing that average bond yields rose an average 170 basis points between September 2021 and June 2022, Mr. McKenzie asserts without justification that this "indicate[s] that investor's required return on debt securities has increased an average 170 basis points."[82] More broadly, Mr. McKenzie makes the argument that current Treasury bond yields accurately reflect investors' required return on investments for the immediate future. This is directly inapposite to prior testimony of Mr. McKenzie, where he argued that investors' views of future Treasury bond yields was not indicative of the investors' expected return on investments.[83] Even if Mr. McKenzie is correct about the forecasts of Treasury and other bond yields, which he is not, his attempted threading of the needle between his prior position and the current case is a logical fallacy. The fact that investors currently believe that rates will go up and previously believed those rates would go down or fluctuate wildly[84] has no bearing on their accuracy in calculating ROE. As with a broken clock, an unreliable indicator may occasionally line up with reality – this makes it no more reliable than at any other time.

44 Mr. McKenzie's predictions regarding future bond yields themselves do not line up with the actual evidence presented over the course of this case. Recent events, as shown in Staff's cross exhibits for Mr. McKenzie, further demonstrate that Mr. Parcell's ROE and cost of capital calculations are much more realistic than those of Mr. McKenzie. This is a repeated argument between parties within Avista's cases. Mr. McKenzie argues in his rebuttal[85] and cross-examination[86] testimony that bond yields will not go down in the near future. In his rebuttal testimony, filed before the lowering of the Fed interest rate, Mr. McKenzie was

[82] *Id.*
[83] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-200900 & UG-200901, Exh. AMM-15T, at 18:1-13 (May 28, 2021).
[84] McKenzie, AMM-15T, at 21:5-14.
[85] McKenzie, AMM-15T, at 17:9-13.
[86] McKenzie, TR, at 160:24-25.

equally adamant that yields would not go down at all, an assertion on which he was quickly proven demonstrably wrong when the Fed did lower its interest rates approximately a month later.[87] And, despite Mr. McKenzie's assertions on cross, bond yields and interest rates have declined across the board,[88] and have been since 2023.[89] Even his core assertion that there "isn't a forecast" showing investor expectations of declining interest rates,[90] is simply wrong – widely used economic indicators as testified to by Mr. Parcell show a market expectation of falling interest rates.[91]

45 Quite simply, Mr. McKenzie's testimony regarding bond yields seems to be favoring whatever will cause a major increase in ROE for Avista. In 2022, Mr. McKenzie insisted that investor expectations and lowering Treasury bond yields was immaterial and artificial, resulting in the company needing more ROE to compensate.[92] In 2024, Mr. McKenzie now insists that investor expectations and rising Treasury bond yields is an instrumental and fundamental indicator, resulting in the company needing more ROE to compensate.[93] This follows Mr. McKenzie's track record of asking for major increases to Avista's ROE in every recent rate case before this Commission, regardless of economic conditions or outlook.[94] Staff is not indifferent to the rise in costs over the last few years, as seen by its proposal of a 10 basis point increase in ROE for Avista. Staff insists, however, that reasoned analysis of the current market trends in no way indicates the 10-fold higher increase that Avista requests and asks that said request be denied.

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[87] *Id.* at 160:5-9.
[88] *See generally,* AMM-19X.
[89] Parcell, DCP-1T, at 16:20-17:2.
[90] McKenzie, TR at 160:24-25.
[91] Parcell, DCP-1T, at 16:16-20.
[92] *Avista,* UE-2009001 & UG-2009001, Exh. AMM-15T, at 18:8-10.
[93] AMM-1T, at 35:5-8.
[94] *See* AMM-20X.

2. Avista's credit rating is improving and the company is financially healthy.

45 Avista also argues through Mr. McKenzie that it is suffering a dire financial outlook, necessitating higher ROE and cost of debt requirements as a consequence.[95] Staff, meanwhile, argues both for increased specificity in capital structure and a lower cost of debt, which comports with the Company's actual, positive financial outlook.[96]

46 A core component of capital structure is the balancing between preservation of credit rating and access to capital on the one hand and the controlling of costs to ratepayers on the other.[97] Avista tries to paint its financial state as dire, which could necessitate a higher cost of debt in its capital structure. Yet as shown by Mr. Parcell[98] and admitted to by Company Witness Christie on cross,[99] Avista is financially healthy, and its credit rating is stable and improving. Moody's cites recent legislation in Washington, specifically SB 5295, as "credit positive".[100] S&P, meanwhile, states that Avista has "low risk" and a strong business profile.[101] Mr. Christie admitted that Avista is on track to meet its credit thresholds in 2024.[102] Mr. McKenzie argues that Moody's has given a negative outlook in part due to regulatory lag and cost recovery, yet that argument selectively quotes from an overall positive report.[103]

47 Avista also has no fears of lessened access to capital. As testified to by Mr. McKenzie, Avista's 10.4 percent return on equity is not a requirement to obtain funding.[104] Avista's

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[95] McKenzie, AMM-1T, at 9:26-27.
[96] Parcell, DCP-1T, at 23:27-28.
[97] *Id.* at 31:11-13; *see also*, 2004 PSE GRC Order at 13, ¶ 27.
[98] *See* Parcell, DCP-1T, 23:7-38.
[99] Christie, TR at 119:6-8.
[100] *Id.* at 22:8.
[101] *Id.* at 22:18-19.
[102] Christie, TR at 119:6-8.
[103] "We view Avista's regulatory jurisdiction to be generally credit supportive. . . We view [the settlement of Avista's 2022 general rate case] as credit supportive and a driver of Avista's improved credit metrics in 2023." Parcell, DCP-1T, at 23:7-39.
[104] McKenzie, TR, at 151:7-13.

actions have also borne out this assertion. Avista's capital structure through its last case was 48.5 percent common equity, the same as the proposed structure in this case.[105] Yet, Avista's actual common equity ratio stands at 46.2 percent, well below its current authorized rate.[106] A utility will generally regard higher equity as a "safety," increasing costs but ensuring greater financial integrity.[107] A utility that faces dire financial troubles and funding shortages, as Avista claims to do, would manifest some intent to solve those problems. Yet Avista has done no such thing, even within the already authorized boundaries set by the Commission. This indicates that Avista has no legitimate fear of lessened access to capital, an assertion which Mr. McKenzie would not deny on cross.[108] By keeping its true equity lower, it can charge ratepayers at an already inflated hypothetical rate structure of 48.5 percent while pocketing the difference. The higher, less particularized cost of debt relative to Staff's proposal would only serve to further inflate Avista's rate-set cost of debt compared to its actual costs, and the Commission should therefore deny Avista's proposal and affirm that of Staff.

3. Expansion of infrastructure is immaterial to roe or cost of capital considerations.

48 Mr. McKenzie also cites to significant infrastructure expansion as necessitating increased earnings potential for Avista.[109] In particular, Mr. McKenzie focuses on a projected $500-$575 million in capital additions through 2026.[110] This argument does not make sense on its face. As Avista adds plant and infrastructure, its rate base will increase. This rate base will, naturally, increase Avista's revenues and earnings, since Avista's ROE will apply. Not only

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[105] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-220053 & UG-220054, Final Order 10/04, at 56 ¶ 156 (Dec. 12, 2022).
[106] Parcell, DCP-1T, at 30:16-17.
[107] *Wash Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-130043, Final Order 05, at 8 ¶ 25 (Dec. 4, 2013).
[108] McKenzie, TR at 151:10-12.
[109] McKenzie, AMM-1T, at 7:34-38.
[110] *Id.* at 14:17-18.

that, the hypothetical capital and rate-plan process implemented by SB 5295 is considered to be a significant improvement for capital additions by reducing regulatory lag, increasing cash flow, and generating credit positivity for Avista.[111] Therefore, Mr. McKenzie's arguments concerning infrastructure improvements should be rejected.

4. "Constructive Regulation" is a long-standing Commission practice and irrelevant to the current case.

49 Avista argues that "constructive" and "supportive" regulation necessitates a higher ROE.[112] *Hope* and *Bluefield* do affirm the basic principle that a regulator should ensure the financial integrity of regulated companies.[113] Yet, Avista's argument here boils down to little more than extremely selective quotes and a vague implication that the Commission and Staff are somehow deficient in the carrying out of their respective duties.[114] As stated before, Avista is financially healthy, as attested to by Moody's and S&P.[115] Moreover, both credit agencies have specifically commented on improving relations, credit positive regulatory changes like Performance Based Ratemaking, and legislation such as SB 5295 that have all contributed to an improving and positive regulatory environment in Washington.[116] Even disregarding all of that, Avista's request for "constructive regulation" seems little more than an attempt by Avista to flip the onus of justifying rates from the Company to the Commission, exactly counter to the burden under Commission regulations.[117] As such, this argument should be disregarded entirely.

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[111] Parcell, DCP-1T, at 21:12-14.
[112] McKenzie, AMM-1T, at 26:14-16.
[113] *See Hope*, 320 U.S. at 693.
[114] McKenzie, AMM-1T, at 26:12-29:2.
[115] Parcell, DCP-1T, at 23:7-39.
[116] *Id.* at 22:3-36.
[117] WAC 480-07-540.

5. Avista's attrition claim is improperly raised, and the proposed solution would not address attrition.

50 Mr. McKenzie claims that Avista has had a long period of under-earning, marked by its actual ROE lagging under its authorized ROE from the Commission.[118] This argument fails for two reasons. First, the Company has not properly raised an attrition claim in this case. To properly claim attrition, a company must conduct and present studies demonstrating the claimed attrition as well as particularized reasonings for why that attrition was outside the realm of the company's control.[119] Avista has presented none of this information, only a single chart showing their claimed actual and authorized ROE alongside a bare assertion of "regulatory lag" as a cause for the alleged underearning.[120] Not only is this an unsupported statement, regulatory lag on its own cannot be allowed to be a basis for attrition, since lag is at least partially under the realm of the company's control.[121]

51 Second, an increase in ROE logically does not address the alleged problem that Avista presents. Avista's request to raise its earnings potential as a result of erosion would, on its own, do nothing to bring its ROE closer to parity. Instead, Avista would still underearn its authorized ROE – only the location of the gap might shift on the graph, not the relative size of that gap. The Company's argument is in essence saying that the Commission should arbitrarily inflate its ROE determination in the hope that it brings the company closer to parity, resulting in both a hidden ROE Avista *should* get alongside the authorized ROE the Commission actually assigns the company. This approach does not comport with the scientific, data-driven

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[118] McKenzie, AMM-1T, at 21:3-5.
[119] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-160228 & 160229, Order 06, at 27 ¶ 52 (Dec. 15, 2016).
[120] McKenzie, AMM-1T, at 21:2-10.
[121] *Avista Corp.*, Docket UE-160228 & UG-160229, Order 06, at 46 ¶ 78 ("Avista will continue to control the timing of its rate cases and is in a position to shift the timing.").

approach the Commission is supposed to employ in determining ROE and cost of capital for a company.[122] Therefore, Avista's argument concerning underearning should be denied not only from a legal but also a logical standpoint.

C. The Commission Should Affirm Long-Standing Principles of Gradualism, Contrary to Avista's Assertions

52 In its rebuttal testimony, Avista argues through Mr. McKenzie that the Commission's long-standing principle of gradualism has only ever applied to rate design and should therefore not apply to the significant ROE increase Avista requests in this case.[123] This position is in direct conflict with Commission precedent and should be summarily disregarded.[124]

53 As quoted by Mr. Parcell in his direct testimony, the Commission has an unequivocal history of applying gradualism to ROE in rate cases, including in Avista's own prior cases.[125] Avista's assertion that gradualism cannot apply to ROE is particularly perplexing given the fact that it has directly benefited from ROE gradualism in prior cases.[126] Gradualism protects ratepayers and utilities alike, and the Commission should reaffirm its use for ROE considerations.

D. The Commission Should Reject the Use of a Flotation Adjustment

54 Mr. McKenzie places a 0.08 flotation cost adjustment on the results of his ROE calculations.[127] Staff rejects this adjustment,[128] as has the Commission in prior litigated cases

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[122] *See Bluefield*, 252 U.S. 689-90.
[123] McKenzie, AMM-15T, at 32:15-16.
[124] *E.g.*, *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-200900, UG-200901 & UE-200894, Order 08/05, 38 ¶ 97 (The Commission "must evaluate all cost of capital evidence offered and consider other relevant principles and factors such as the general state of the economy, investment cycles in the industry, and the principle of gradualism to determine, consistent with the public interest, a reasonable range of returns and what specific ROE within that range is appropriate for determining Avista's revenue requirements."); *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-170485 & UG-170486, Order 07/02, at 28 ¶ 68 (April 26, 2018).
[125] Parcell, DCP-1T, at 60:18-24.
[126] *Avista Corp.*, Dockets UE-170485 & UG-170486, Order 07/02, at 28 ¶ 68.
[127] Parcell, DCP-1T, at 63:15.
[128] *Id.* at 63:17.

with Avista.[129] As stated by Mr. Parcell, the flotation cost adjustment is purely theoretical with no evidentiary support for any actual costs faced by Avista.[130]

55 Generally, a flotation cost is meant to account for the costs of issuing a stock that are incurred by investors when purchasing new equity securities.[131] The Commission should reject the inclusion of flotation costs in ROE for two reasons. First, flotation costs are a known factor and are therefore already incorporated into investor evaluations of stock by the ROE models used to calculate a company's authorized return.[132] Adding the costs would therefore be redundant. Mr. McKenzie, in his rebuttal, ignores the actual crux of Mr. Parcell's assertion. The assertion is not, as Mr. McKenzie claims,[133] simply that flotation costs are known to investors, and that therefore those costs should not be included in rates. Rather, *because* those costs are known, they are naturally included in ROE models meant to account for investor behavior.[134] Including those costs into rates would in essence ask ratepayers to pay for flotation costs twice, once when the costs were natural incorporated in rates, and the second time through Mr. McKenzie's added adjustment.

56 The Commission should also reject a flotation adjustment because, quite simply, it has done so several times before and has been presented no reasoning that would cause it to diverge from those earlier decisions. Mr. McKenzie's substantively identical arguments for Avista have been directly rejected in two prior rate cases.[135] There is a reason Mr. McKenzie must venture far back into the Commission's record for approval of flotation costs and into

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[129] *See Avista*, Dockets UE-170485 & UG-170486, Order 07/02, at 30 ¶ 75; *Avista*, Dockets UE-200900 & UG-200901, Final Order 08/05, at 38 ¶ 99.
[130] Parcell, DCP-1T, at 63:17-22.
[131] McKenzie, AMM-1T, at 49:4-11.
[132] Parcell, DCP-1T, at 64:2-3.
[133] McKenzie, AMM-15T, at 73:5-12.
[134] Parcell, DCP-1T, at 64:2-3.
[135] *See Avista*, Dockets UE-170485 & UG-170486, Order 07/02, at 30 ¶ 75; *Avista*, Dockets UE-200900 & UG-200901, Final Order 08/05, at 38 ¶ 99.

other jurisdictions for more recent approvals:[136] flotation costs have been soundly, repeatedly rejected by the Commission.[137] The Commission should do so here as well.

V. POWER COSTS

57 Staff next makes several recommendations concerning Avista's power costs. First, Staff recommends changes to Avista's Energy Recovery Mechanism (ERM). Second, Staff recommends rejection of Avista's proposed forecast error adjustment. Finally, Staff recommends requiring Avista to incorporate the costs of allowances needed to comply with the CCA into Avista's dispatch logic, for reasons of both economics and equity.

A. The ERM

58 Staff proposes that the energy recovery mechanism (ERM) structure be revised to a $3 million deadband and 90/10 symmetric sharing band.[138] This revised structure is in-line with recent Commission decision in PacifiCorp's 2023 GRC[139] but updates and reflects a changing net power expense environment and the changing financial burdens resulting from that environment.

59 The Commission has a long history of employing power cost sharing mechanisms, such as the ERM, as "useful mechanisms that allocate appropriately between shareholders and ratepayers the risk of power cost variability."[140] The purpose of the mechanism is to equitably allocate the risk of "ordinary power cost variability."[141] The mechanism is designed to

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[136] McKenzie, AMM-1T, at 52:12-53:17.
[137] *See Avista*, Dockets UE-170485 & UG-170486, Order 07/02, at 30 ¶ 75; *Avista*, Dockets UE-200900 & UG-200901, Final Order 08/05, at 38 ¶ 99.
[138] Wilson, JDW-1TCr at 37:2-8.
[139] *Wash. Utils & Transp. Comm'n v. PacifiCorp d/b/a Pac. Power and Light Co.*, Dockets UE-230172 & UE-210852, Order 08/06 (Mar. 19, 2024).
[140] *In re Petition of Avista Corp., d/b/a Avista Utils. for Continuation of the Comp.'s Energy Recovery Mechanism, with Certain Modifications*, Docket UE-060181, Order 03, at 9 ¶ 23 (June. 16, 2006).
[141] *Wash. Utils. & Transp. Comm'n v. Avista Corp. d/b/a Avista Utils.*, Dockets UE-170485, UG-170486, UE-171221 & UG-171222, Order 07/02, at 43 ¶ 123.

appropriately "motivate Avista to effectively manage or even reduce its power costs."[142] Modifications of a sharing mechanism should be in the public interest.[143]

60 In PacifiCorp's 2023 GRC, Staff presented a modification to PacifiCorp's Power Cost Adjustment Mechanism (PCAM) and PacifiCorp sought elimination of the mechanism's dead and sharing bands.[144] The Commission rejected both proposals, choosing to maintain the present structure of the PCAM.[145] A significant basis for the Commission's reasoning in rejecting elimination of the PCAM's dead and sharing bands was that:

> Without the guardrails of deadbands and sharing bands, the utility no longer has an economic stake in a major resource decision. As a result, the utility is more likely to ignore fossil fuel price volatility because it knows, regardless of price fluctuations, that it will be made whole by ratepayers. This approach creates a circumstance that one witness termed a "moral hazard" where one party is willing to engage in risky behavior or not act in good faith because it knows the other party, in this case the ratepayer, will bear the economic consequences.[146]

61 However, in the Commission's order, it acknowledged that adjustments to the mechanism "must be made in order for the PCAM to continu[e] operating as intended[]" and encouraged the parties "to discuss when adjustments should be made to address the reduction in overall benefits."[147]

62 Staff's recommended modifications to the ERM promote the equitable sharing of risks, consider the changing energy environment, and are in the spirit of the Commission's recent decision in the 2023 PacifiCorp GRC. As stated in testimony, Staff believes that the current ERM structure "provides [Avista] with material incentives that affects its current resource

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[142] *In re Petition of Avista Corp.*, Docket UE-060181, Order 03, at 9 ¶ 23.
[143] *In re Petition of Avista Corp.*, Docket UE-060181, Order 03, at 9 ¶ 24.
[144] *PacifiCorp*, Dockets UE-230172 & UE-210852, Order 08/06, at 120 ¶ 381, 382 (PacifiCorp states the mechanism should be eliminated or the Commission should adopt Staff's single 90/10 sharing proposal).
[145] *PacifiCorp*, Dockets UE-230172 & UE-210852, Order 08/06, at 121 ¶ 384.
[146] *PacifiCorp*, Dockets UE-230172 & UE-210852, Order 08/06, at 123 ¶ 390.
[147] *PacifiCorp*, Dockets UE-230172 & UE-210852, Order 08/06, at 124 ¶ 392.

decisions."[148] As Staff witness Wilson states, a fraction of Avita's nameplate capacity comes from Net Power Expense (NPE) contributing resources like natural gas.[149] However, it is likely that Avista's wind and hydropower procurements are more likely to impact rates; the variability of both of these resources are outside of Avista's control.[150] For instance, hydro and wind can have potentially large impacts on NPE, but Avista likely will lose more and more control over the forces that impact that variability.[151] Utilities cannot control rainfall nor can they control the force and amount of wind around a wind farm. This beneficial transition to clean energy resources will inevitably change how power costs and power variability impact rates. The ERM continues to have an important place in balancing that variability, but it must also evolve as resources do to ensure cost sharing remains equitable. Staff's proposal to simplify the sharing bands, by employing two equal sharing bands, and by reducing the deadband not only preserves equitable sharing of risk, but also recognizes the developments in the energy mix and the changing risk profile associated with those developments. The 90/10 customer/company symmetric band still incents Avista to properly manage the power costs variables in its control. While the $3 million deadband will adequately account for moderate variations from the forecast without leaving one side with a windfall and the other side shouldering an unnecessarily large burden.

63 Public Counsel Witness Earle and AWEC witness Mullins disagree with Staff witness Wilson's assessment of the ERM, and while their testimonies highlight some important points, their conclusions are incorrect. While both witnesses argue that the ERM is functioning as

[148] Wilson, JDW-1TCr 35:19-21.
[149] Wilson, JDW-1TCr 35:21-26:1.
[150] Wilson, JDW-1TCr ta 36:1-5.
[151] Wilson, Exh. JDW-1TCr at 36:1-5.

intended[152] they fail to recognize that the factors underlying NPE are changing, and will do so at an increased rate as we draw closer to 2030 and other energy transition deadlines under Washington law.

64 While Staff joins some of witness Earle's criticisms of Avista, such as the Company's statement that "power supply costs cannot be forecasted[,]"[153] it takes issue with Public Counsel's position that "part and parcel of a utility's job is to deal with changes in the market and forecast anticipated costs as well"[154] in the context of rejecting modifications to the ERM. Changes in the market will occur and forecasting certain costs may become difficult, but in reality, some factors controlling power costs (such as natural weather events disrupting renewable generation) are inevitable and in control of neither Company nor the ratepayer. Witness Earle is critical of witness Wilson's proposal to simplify the ERM, calling the recommendation unsupported.[155] However, the reasoning is clear: growing reliance on renewable and non-emitting sources such as wind and hydro means potential increased variability.[156] While it is within Avista's power to review weather modeling and work to mitigate the impacts of those bad years, Avista cannot force atmospheric changes to even out rain and snowfall from year to year. Staff agrees with witness Earle that a deadband should remain in place as there are still NPE costs within Avista's control and the Company should be encouraged to manage those risks as effectively as possible; however, Staff and witness Earle diverge on how large that deadband should be.

[152] Mullins, BGM-8T at 2:29-30; Earle, RLE-1CT at 14:12-13.
[153] Earle, RLE-1CT at 8:13.
[154] Earle, Exh. RLE-1CT at 9:3-4.
[155] Earle, Exh. RLE-17CT at 2:10-11.
[156] Wilson, Exh. JDW-1CTr at 26:4-5.

65 Witness Mullins's criticisms of Staff's proposal is based on his own legal interpretation of the Commission's decision in PacifiCorp's 2023 GRC. As aptly stated by the Commission, energy risk sharing mechanisms are "designed to distribute equitably the risks of power costs between the customer and Company."[157] Witness Wilson's point is that the clean energy transition, and subsequent move away from many fuel-based generating resources, necessarily changes the source of risk.[158] The current ERM structure does not accurately reflect some of these changes, yet they are changes that are on the horizon. Witness Mullins's assertion that the current ERM structure equitably shares risk is merely the conclusory statement that "the current sharing rations do equitably share risk between customers and Avista."[159]

B. The Commission Should Reject Avista's Proposed Forecast Error Adjustment

66 Avista seeks to pro form into its revenue requirement and its ERM baseline $29 million to account for error in its power cost forecasting. In making this proposal, which the other parties could not meaningfully test, Avista asks the Commission to allow it to charge ratepayers for items Avista cannot identify, for reasons Avista cannot explain, based on nothing more than Avista's guess about the amount of money at issue. The Commission should reject the adjustment as arbitrary, and thus as unfair, unjust, or unreasonable.

1. The proposed forecast error is based on untested, and therefore unreliable, testimony.

67 Avista initially proposed in its direct case a "portfolio forecast error adjustment."[160] Although Avista avers that it has always made adjustments to its power costs,[161] it had never before offered this adjustment, or anything like it.[162]

[157] *PacifiCorp*, Dockets UE-230172 & UE-210852, Order 08/06, at 123 ¶ 389.
[158] Wilson, Exh. JDW-1TCr at 35:19-36:5.
[159] Mullins, Exh. BGM-8T at 4:2-4.
[160] Kalich, Exh. CGK-1T at 23:20-24:6; Exh. CGK-3; Kinney, Exh. SJK-1T at 66:9-22.
[161] *E.g.*, Kinney, Exh. SJK-17T at 8:16-9:2.
[162] Kinney, TR. at 181:24-185:5.

68 The adjustment's sponsors, M. Kalich[163] and M. Kinney,[164] admitted in their initial testimony that Avista could not point to any specific rate year event that would cause the forecast error. Lacking anything to point to as a cause, they could only estimate the dollar amount involved.[165] To make that estimate, they averaged five-years' worth of the difference between what Avista called the "Forward (Forecast) Value" and the "Actual Value" for components of its portfolio.[166] Despite a recent history of acrimony concerning Avista's power costs,[167] Avista chose not to vet its proposal for the forecast error adjustment with Staff, Public Counsel, or any of the other parties to its rate cases.[168]

69 Given the nature of the adjustment, Staff sought summary determination seeking its rejection as unknown, unmeasurable, and not offset by factors that might have reduced its revenue impact.[169] Avista's answer to that motion largely focused on the need for a hearing to develop the factual record about its proposal.[170]

70 In some parallel universe or universes, that hearing occurred. But not here in this one. Instead, the parties proceeded to hearing on a *different* proposal offered after the Commission denied Staff's motion but noted concerns as to whether the company's proposal involved

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[163] Kalich, Exh. CJK-1T at 24:7-25:14.
[164] Kinney, Exh. SJK-1T at 68:13-69:14.
[165] Kinney, Exh. SJK-1T at 66:23-67:17.
[166] Kinney, Exh. SJK-1T at 67:1-68:12.
[167] Kalich, Exh. CGK-1T at 25:6-14.
[168] Kinney, TR. at 198:11-199:6.
[169] *See generally*, *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-240006 & UG-240007, Commission Staff's Motion for Partial Summary Determination (Mar. 20, 2024).
[170] *E.g.*, *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-240006 & UG-240007, Answer of Avista Corp. to Commission Staff's Motion for Partial Summary Determination, 1 ¶ 2 (Apr. 9, 2024) ("Staff's [m]otion . . . would deny the Commission the opportunity to develop a complete record, through the hearing process, on the issues presented, before ultimately determining whether, at the end of the day, the resulting rates are just, reasonable, and sufficient.") ("Avista's Response"); *see Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-240006 & UG-240007, Order 07, 36-37 ¶ 103-09 (Aug. 7, 2024) (denying Staff's motion in order to allow development of a record on which the Commission could exercise its discretion).

known and measurable costs, or consideration of offsetting factors.[171] This new proposal involved averaging the last three years' worth of ERM variances.[172]

71 As with its original proposal, Avista did not consult with the other parties about the new one.[173] And because Avista offered the proposal on rebuttal, the parties had no opportunity to respond to it with testimony.[174] Instead, the record, the one Avista demanded a hearing to develop, the one where "the issues raised are fully vetted through the hearing process,"[175] consists only of the company's testimony supporting its proposal and whatever the parties could do with cross-examination.

72 As the Commission has long recognized, "at some point, the company's positions must be made clear in order for the other parties to respond to those positions. That point is prior to rebuttal. The parties in a rate case should not have to constantly respond to a moving target."[176] The Commission has, accordingly, long suggested that it may reject proposals offered on rebuttal.[177]

73 Avista has done exactly what the Commission has cautioned against. In response to Staff's motion for summary determination, the company demanded a hearing on its proposal.

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[171] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-240006 & UG-240007, Order 07, at 29-32 ¶¶ 81-91.
[172] Kinney, Exh. SJK-17T at 11:8-11.
[173] *See* Kinney, Exh. SJK-17T at 10:19-11:12.
[174] *See Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-240006 & UG-240007, Order 02, Appx. A (Feb. 27, 2024) (setting out the deadlines for the filing of various rounds of testimony).
[175] Avista's Response at 2-3 ¶ 6.
[176] *Wash. Utils. & Transp. Comm'n v. Harbor Water Co., Inc.*, Docket U-87-1054-T, 1988 Wash. UTC Lexis 68, * 37 (May 7, 1988).
[177] *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, Order 08 (Mar. 25, 2015) ("[i]n any event, we take this opportunity to caution that in our proceedings the purpose of the rebuttal round of testimony is to provide a party seeking a rate increase an opportunity to rebut evidence presented by other parties in their response testimonies. Any evidence presented on rebuttal that is outside this purpose may be rejected."); *PacifiCorp* Dockets UE-230172, UE-210852, Order 08, at 30 ¶ 110 ("[i]n its rebuttal filing, the Company provided a more detailed analysis of how its proposed rate design would impact named communities. However, the Commission expects regulated companies to set forth their proposed tariff revisions and supporting justifications in direct testimony, rather than rebuttal testimony. We consider the Company's rebuttal analysis in this case given the emerging nature of these issues in Commission proceedings, but the Company should not rely on this consideration in the future.").

But in response to the Commission's order denying Staff's motion, the company offered a completely new proposal. That proposal was not vetted by the other parties such that they could have provided input on the methodology or data used to correct for any biases.[178] And the non-company parties had no chance to respond to it with testimony given the procedural schedule in this matter.[179] Avista thus asks the Commission to approve a *$29 million dollar* adjustment that has not been meaningfully tested through an adversarial process.[180] The Commission should deny that request.

74 Although the Commission should reject the forecast error adjustment, it can and should grant Avista the alternative relief it seeks. The company suggests a new round of power cost modelling workshops to address issues like its alleged forecast error.[181] The Commission should order those so that the company and other interested persons can consider how the company should deal with any forecast error.[182] That would, at a minimum, allow the company to present a fully tested proposal in its next rate case (which should be filed next year, as discussed above) and potentially allow the parties to present to the Commission a fully agreed-to method for addressing power cost variance.

2. The proposed forecast error unfairly and unreasonably distorts the purpose of the ERM.

75 The forecast error adjustment upends the purposes and operation of the ERM. Rather than adjusting its NPE to reflect expected costs (which its NPE adjustment already does), the forecast error adjusts the company's NPE to account for variances the company expects

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[178] *See* Kinney, Exh. SJK-17T at 11:1-7.
[179] *See Avista Corp.*, Dockets UE-240006 & UG-240007, Order 02, at Appx. A.
[180] *Anderson v. Akzo Nobel Coatings, Inc.*, 172 Wn.2d 593, 607, 260 P.3d 857 (2011) ("evidence is tested by the adversarial process within the crucible of cross-examination, and adverse parties are permitted to present other challenging evidence.").
[181] Kalich, Exh. CGK-7T at 7:10-23.
[182] *Cf.* Kinney, TR. at 199:17-21 (admitting that Avista has previously asked the Commission to reject unvetted methodological changes).

between its forecasted and actual power costs.[183] That estimated variance, of course, represents what Avista would recover through the ERM in its annual retrospective review.[184] Put otherwise, Avista is not adjusting for a cost here, but is instead seeking "pre-payment of an anticipated revenue requirement."[185] "Anticipated" because Avista has not yet incurred rate-year power cost expenses, and Avista cannot say whether those costs will actually vary from its forecasted expenses, or by how much.[186] That is unreasonable,[187] and it massively distorts the purpose and operation of the ERM, reflecting a shift in some $29 million dollars of power costs from the company straight to customers.

76 The Commission's past practices show how revolutionary Avista's request is. As admitted by Avista's witnesses at hearing, this would be the first instance where the Commission: (1) authorizes a utility to use a tracking mechanism; and (2) embeds into rates before the tracker's deferral ever operates the amounts the company expects to book in it.[188] The second should make the first unnecessary, unless the Commission intends the ERM to eliminate all of Avista's power cost risk. It does not, of course, given its repeated statements that it meant the ERM to properly allocate risk between the rate payers and the company.[189]

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[183] *E.g.*, Kinney, TR. at 184:12-21.
[184] Kinney, TR. at 186:12-16.
[185] Wilson, Exh. JDW-1T at 9:10-11 (internal quotation omitted).
[186] Wilson, Exh. JDW-1T at 8:10-9:14 (A better description of Avista's $65.8 million calculation is that it is a pre-payment of a revenue requirement that Avista expects based on historical trends. The ERM is a cost sharing mechanism which allows companies to annually true up actual power supply costs with authorized baseline costs; the result is a difference in NPE from the forecast used to set rates. That difference is not, itself, an expense. It is rather the result of the difference between revenues and expenses that can result in either a credit or a charge to customers . . . Thus, Avista is proposing to include in its NPE forecast recovery of a revenue requirement that does not yet exist. This is what I mean by "pre-payment" of an anticipated revenue requirement. But in reality, this revenue requirement may never occur and could even be a credit to customers. It is unreasonable for Avista to propose a large new "cost" that could turn out to be either a credit or a charge to customers – such a "cost" would be unprecedented.").
[187] Wilson, Exh. JDW-1T at 9:12-14.
[188] Kinney, TR. at 186:20-187:2; Kalich, TR. at 271:5-272:9.
[189] *E.g.*, *in re Petition of Avista Corp*, Docket UE-060181, Order 03, at 9 ¶ 23.

77 Avista repeatedly cites Staff witness Gomez's testimony from its 2017 GRC for support in its efforts to incorporate the forecast error adjustment into its NPE and ERM baseline.[190] Staff sees the irony there, even if the company does not. M. Gomez testified that "Avista's power cost forecast is biased towards over-estimating its power costs."[191] He believed the company had achieved that outcome by manipulating its modeling with "arbitrary" inputs, cost adders, changes to the model settings, and out-of-model adjustments,[192] not unlike what Avista proposes here. The Commission found Mr. Gomez's testimony persuasive enough that it ordered workshops to tear Avista's power cost modeling down to the joists and rebuild it.[193] The Commission would undo much of that good work by accepting the forecast error adjustment as proposed, and it should not do so.

3. Avista still fails to show that the forecast error adjustment is known and measurable and that it has considered rate-year offsetting factors.

78 As the Commission has noted, "Washington uses a hybrid test year approach that allows pro forma adjustments only for known and measurable changes–not budgeted or projected changes–that occur, generally within a reasonable time after the end of the test year."[194] The Commission will allow ratemaking treatment for these known and measurable events where the utility can show that it has properly considered offsetting factors.[195]

79 Under Commission precedent, an event is "known" where it "causes a change to test year levels . . . occur[s] either within or soon after[] the test year and [is] in place during the period rates will likely be in effect."[196] Under that same body of law, an expense is known

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[190] *E.g.*, Kinney, Exh. SJK-17T at 10:1-7.
[191] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-170485 & UG-170486, Testimony of David C. Gomez, 9:2 (Oct. 27, 2017) ("Gomez Testimony").
[192] *Avista Corp.*, Dockets UE-170485 & UG-170486, Testimony of David C. Gomez, at 14:8-34:17.
[193] E.g., Kalich, Exh. CGK-7T at 19:14-20.
[194] *Pac. Power & Light Co.*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, Order 08, 3 ¶ 8 .
[195] WAC 480-07-510(3)(c)(ii).
[196] *Wash. Utils & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 06, 11-12 ¶ 14 (Mar. 25, 2011).

where the utility can show it involves a concrete dollar amount through an "actual expenditure, invoice, contract, or other specific obligation."[197] The Commission does not consider a cost as measurable when the utility bases it on "an estimate, a projection, the product of a budget forecast, or some similar exercise of judgment – even informed judgment – concerning future . . . expense."[198] And, as mentioned, the Commission requires consideration of contemporaneous changes in revenues or expenses that might offset the ratemaking impact of a pro forma adjustment.[199] This includes both direct (meaning factors tied to the pro forma adjustment) and indirect (meaning factors with no direct relation to the pro forma adjustment) offsets.[200]

80 The Commission will relax these standards to some extent in the context of power costs.[201] But that relaxation applies only to modeled power cost results.[202] That is because the Commission has concluded that "the modeled results are generally acceptable if the model inputs are reasonable."[203]

81 Here, Avista admits that it made the forecast error adjustment outside of the modeled results,[204] and its analysis lacks the rigor to substitute for the models.[205] The forecast error adjustment must thus comport with the known and measurable standards, and the offsetting factors standard. It fails each of those.

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[197] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, 21 ¶ 45 (Dec. 22, 2009).
[198] *Avista Corp.*, Dockets UE -090134, UG-090135 & UG-060518, Order 10, at 21 ¶ 45.
[199] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705, Order 11, 12 ¶ 27 (Apr. 2, 2010).
[200] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705, Order 11, at 12-13 ¶ 28-29.
[201] *See* WAC 480-07-510(3)(c)(ii) ("Pro forma fixed and variable power costs, net of power sales, may be calculated directly based either on test year normalized demand and energy load, or on the future rate year demand and energy load factored back to test year loads.").
[202] *Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, at 22 ¶ 49.
[203] *Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, at 22 ¶ 49.
[204] Kinney TR. at 182:11-21.
[205] *Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, at 21 ¶ 45.

82 The portfolio forecast error adjustment in unknown, in either of the forms Avista has offered. As Staff has explained, the Commission generally accepts as known discrete events whose effects it can pinpoint for purposes of ratemaking (such as the signing of a new contract increasing labor costs on a pro forma basis,[206] or the transfer of new plant into service increasing depreciation expense and the utility's return, but potentially reducing operations and maintenance expense).[207] In its initial testimony, Avista's witnesses described their inability to know which event or events would cause any forecast error.[208] On rebuttal, company witnesses offer no event or occurrence that they believe will cause the forecast error.[209] And, during cross, those same witnesses admitted that they cannot identify any such events.[210] Without pinpointing the events underlying the error, the company cannot credibly claim that it will know that they will have rate year impacts.

83 Similarly, the forecast error was not measurable. At the time Avista proposed the adjustment, its witnesses could not provide the Commission with concrete dollar amounts shown by contracts, receipts, ledger entries, or some other proof of the expense.[211] Instead, Avista attempted to "illustrate the magnitude"[212] of the variance at issue, offering estimates, which the Commission has long rejected as "measurable."[213] Avista changes the method of calculation for the adjustment on rebuttal, but otherwise does nothing to make its costs more

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[206] *E.g.*, *Avista Corp.*, Dockets UE-170485, UG-170486, UE-171221 & UG-171222, Order 07, at 102 ¶¶ 313-14.
[207] *See e.g.*, *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-150204 & UG-150205, Order 05, 16-18 ¶¶ 35-46 (Jan. 6, 2016).
[208] Kinney, Exh. SJK-1T at 68:15-16, 69:2-14.
[209] *See generally* Kalich, Exh. CGK-7T; Kinney, Exh. SJK-17T.
[210] Kinney, TR. at 192:4-8 ("Q: Sitting here now, can you tell the Commission what's going to cause the variability between whatever's embedded in rates and whatever's recovered through the ERM? A: Not with complete certainty.").
[211] *See* Kalich, Exh. CGK-1T through Exh. CGK-6; Kinney, Exh. SJK-1T through Exh. SJK-16.; *cf. Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, at 21 ¶ 45.
[212] Kinney, Exh. SJK-1T at 67:1-68:12.
[213] *Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, at 21 ¶ 45.

certain. The company's witnesses admit that it has no receipts for the forecast error,[214] nor signed contracts,[215] nor ledger entries.[216] Indeed, when asked whether Avista could produce any evidence that quantified the forecast error adjustment at $29 million, M. Kinney answered succinctly, "No."[217] Avista instead uses a mathematical operation to estimate the rate-year impacts of any forecast error; but, in doing so, it offers the type of "exercise of judgment" that the Commission rejects as the basis for pro forma adjustments.[218]

84 Finally, Avista continues to fail to discharge its duty of considering offsetting factors. As Staff has noted, Avista's inability to identify the specific rate-year cause of any power cost variance prevents it and the other parties from attempting to analyze any direct offsetting factors that might reduce or eliminate the adjustment's revenue requirement impacts.[219] And while Avista claims that its rebuttal methodology includes offsets, by definition it would only include those booked to the FERC accounts used to track the ERM, not other direct offsets, and certainly not rate-year indirect ones, all of which will leave the ERM baseline set too high.[220]

85 Avista offers two main defenses as to whether the forecast error adjustment meets the requirements for a pro forma adjustment under WAC 480-07-510(3)(c). First, it claims that its methodology involves known and measurable changes because it uses actual ERM data. But the known and measurable standard concerns the *post-test-year* impacts of a change not otherwise accounted for in a utility's rate case.[221] Avista's previous ERM balances are as

[214] Kinney, TR. at 192:24-193:7.
[215] Kinney, TR. at 193:8-10.
[216] Kinney, TR. at 193:11-12.
[217] Kinney, TR. at 193:17.
[218] *Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, at 21 ¶ 45.
[219] Kinney, TR. at 201:17-19.
[220] Kinney, Exh. SJK-17T at 191:25-192:3.
[221] *See* WAC 480-07-510(3)(c)(ii).

identifiable as Edison's patenting of the incandescent light bulb in 1879,[222] but neither says much about *changes* between Avista's test-year and rate-year power costs that the Commission should recognize for ratemaking purposes.

86 Second, Avista claims that it is simply normalizing costs, and that the known and measurable standards do not prevent it from doing so.[223] But normalization involves adjusting known contributors to utility costs for variability to produce a "normal" value for ratemaking purposes. The classic example is weather normalization: ambient temperatures have significant effects on load, so utilities adjust test-year load based on years' worth of data to determine a "normal" load for rate setting.[224] Avista is not doing this – it literally cannot be, since it cannot identify the causes of the variance at issue. It is instead simply building in a kludge factor to its net power expense; one that unfairly shifts $29 million dollars in risk from it to its ratepayers.

87 Worse, Avista's "normalization" appears to draw on a biased sample set. The Commission generally requires utilities to normalize data on a sizable sample set in order to properly gauge "normal" conditions. For hydro conditions, Avista uses 80 years' worth of data.[225] For weather, Avista uses 20.[226] Even where the Commission allows a much shorter sample set, it typically requires at least five years.[227] And Avista did originally use five years' worth of data,[228] with three of those years showing Avista over-collecting on its power costs.[229]

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[222] U.S. Dep't of Energy, History of the Light Bulb, available at https://www.energy.gov/articles/history-light-bulb (last visited Oct. 16, 2024).
[223] Kalich, Exh. CGK-7T at 39:5-40:5.
[224] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-060266 & UG-060267, Order 08, 55 ¶ 159 (Jan. 5, 2007) ("[w]eather normalization is a statistical method used to estimate what customer loads would have been in the test-year if normal weather conditions . . . had prevailed."). For Avista, weather normalization involves 20 years' worth of data. Kalich, TR. at 265:8-12.
[225] Kalich, TR. at 265:1-4.
[226] Kalich, TR. at 265:8-12.
[227] Kalich, TR. at 265:13-22.
[228] Kinney, TR. at 187:3-6.
[229] Kinney, Exh. SJK-1T ag 52, Illustration No. 5.

But, in its rebuttal proposal, Avista eliminated those non-company-friendly years and instead used a three-year sample set.[230] That change inflates the size of the proposed forecast error, as Avista candidly admits.[231]

C. CCA Costs and Dispatch

88 Avista's costs associated with the Climate Commitment Act should be reviewed on an annual basis to ensure that the company is prudently managing its compliance obligations. Additionally, the cost of compliance should be incorporated into dispatch decisions when ramping up covered plants to meet Washington retail load.

1. CCA compliance costs should be reviewed each year in the ERM filing to ensure prudency and reduce risks of high accumulating costs.

89 The Commission should order a review of Avista's CCA-related compliance costs each year to avoid issues with imprudent decision-making and rate shock from years of accumulated costs. These reviews should coincide with Avista's yearly ERM proceedings.

90 The Commission has already recognized that "[t]here are costs associated with purchasing allowances and reducing emissions in other ways to comply with the CCA."[232] Utilities qualify for no-cost allowances under certain circumstances, and the amount of no-cost allowances allocated to a utility is different dependent on whether the utility is a natural gas or electric utility. For both electric and natural gas utilities, no-cost allowances are distributed each year on October 24.[233]

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[230] Kinney, TR. at 187:9-11.
[231] Kinney, TR. at 187:24-188:2.
[232] *In re Petition of Avista Corp. d/b/a Avista Utils. For an Order Authorizing Accounting Deferral of Natural Gas Costs and Revenues Related to Compliance with the Climate Commitment Act*, Docket UG-220803, Order 01 at 1 ¶ 3 (Feb. 28, 2023).
[233] WAC 173-446-260(3).

91 For electric utilities subject to the Washington Clean Energy Transformation Act (CETA), allowances are supplied at no cost.[234] The number of no-cost allowances that an electric utility may obtain from the Department of Ecology (Ecology) depends on the cost burden of the program on the electric utility.[235] In the current iteration of the rules, Ecology has identified several methods for determining cost burden.[236] An electric utility may receive no-cost allowances for certain administrative costs, but not for all program costs.[237] The number of no-cost allowances that an electric utility receives is updated each year "no later than October 1st."[238]

92 For natural gas utilities, receipt of no-cost allowances is somewhat different. In 2023, a natural gas utility was allocated no-cost allowances for 93 percent of its baseline emissions.[239] In each subsequent year, from 2024 to 2030, the number of no-cost allowances "decreases annually relative to the previous year by an additional seven percent of the utility's allocation baseline."[240] The number of no-cost allowances allocated to a natural gas utility further decreases in the years after 2030, all the way through 2049,[241] with the ultimate result being the achievement of net zero greenhouse gas emissions in 2050 in Washington state.[242]

93 Compliance costs associated with the CCA go beyond the purchase of allowances and those allocated on a no-cost basis. While utilities may receive some no-cost allowances for program administration, those no-cost allowances may not cover the entirety of the program. Additionally, depending on Ecology's approach to allocation of no-cost allowances, there is

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[234] WAC 173-446-230(1).
[235] WAC 173-446-230(2).
[236] WAC 173-446-230(2)(a)-(e).
[237] WAC 173-446-230(2)(h).
[238] WAC 173-446-230(2)(i) and (j).
[239] WAC 173-446-240(2)(a)(i).
[240] WAC 173-446-240(2)(a)(ii).
[241] WAC 173-446-240(2)(b)-(c).
[242] RCW 70A.45.020(1)(c).

the possibility that a utility will need to purchase allowances to meet compliance obligations. As such, Staff recommends that the Commission conduct annual reviews of "Avista's CCA allowance use and transactions in annual NPE review proceedings."[243] These yearly proceedings will allow the Commission to timely determine if Avista's "purchase or sale of allowances is prudent."[244] The benefits of this recommendation are that the Commission can provide timely feedback on decision-making to assist Avista in avoiding imprudent choices over the four-year compliance period, and even out any impacts to rates to avoid potentially significant fluctuations to customer bills.

94 Public Counsel witness Earle and AWEC witness Mullins each disagree with this recommendation. But these objections should be overruled as administrative efficiency and the public interest weighs in favor of yearly reviews. Witness Earle's criticism centers on the four-year compliance period, and surrender of allowances at the end of that period.[245] However, witness Earle admits that a yearly review during ERM proceedings "may be useful to provide guardrails[.]"[246] Witness Earle even agreed at the hearing that in situations where potential CCA costs are high a yearly review may provide for a more even spread of costs[247] than if costs accumulated over four years are reviewed and put into rates all at once. Witness Earle has alluded multiple times to the metaphor of "we don't know the score until the game. . . is over."[248] However, that is not the point of Staff's recommendation. Unlike in a sports game, the costs associated with compliance are not just symbolic of one team's victory over another. These costs, if prudent, have to be paid by someone, whether it be the investors or the

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243 Wilson, Exh. JDW-1TCr at 24:16-17.
244 Wilson, Exh. JDW-1TCr at 25:4-5.
245 Earle, Exh. RLE-8T at 5:9-12.
246 Earle, Exh. RLE-8T at 6:1-2.
247 Earle, Exh. TR at 469:9-13.
248 Earle, Exh. TR at 469:19-21.

ratepayers. Waiting until the end of the four years to review costs sets up at least one "team" for a potential massive impact. If Avista practices imprudent decision making over the four years and, in an extreme example, all costs are disallowed, then investors and the company receive a massive hit, and the company is stuck with a large cache of costs. Alternatively, if Avista prudently manages costs over the four years, but things happen (as they tend to do), and costs were just high, then after four years, ratepayers may experience a massive hit to their utility bills. Even considering no-cost allowances, those may not cover all costs, and the prudent approach here is to cautiously review behavior on a frequent basis (each year) rather than play a waiting game and seeing what happens at the end of four years. Of further concern, witness Earle's proposal to do away with a prudence review and instead employ a mechanism purely reliant on the market is an inappropriate step away from regulatory oversight. Witness Earle seems to think a prudence review is something that can simply be avoided completely with the introduction of an "incentive mechanism" to determine how CCA costs are dealt with.[249] Witness Earle's position that a prudence review of "what [Avista] knew and when did they know and whether the decisions made on that basis were prudent or not can be avoided"[250] is troubling to say the least. Even with existing power cost risk sharing mechanisms, those costs are rightfully still subject to a prudence review.

95 Witness Mullins has similarly troubling views, with a reliance on uncertainty that should not be entertained. Witness Mullins states that "we really won't know" about overruns on the cost of CCA compliance until the end of the compliance period.[251] However, this uncertainty is precisely Staff's point. It is not just about assessing what allowances were

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[249] Earle, Exh. TR at 471:2-9.
[250] Earle, Exh. TR at 471:2-9; 17-22.
[251] Mullins, Exh. TR at 387:4-8.

acquired and used when, it also about the costs that are accumulating, and how those are going to impact rates. To reiterate an important point, at the end of the day someone is paying for compliance, and while witness Mullins thinks an overrun "seem[s] kind of unlikely,"[252] in Avista's $30 million overrun scenario, the simulation resulting in that overage was based on just a 25% overrun from 2023 allowance levels.[253] Recent power costs variances are illustrative of the point that the unexpected can happen, and dismissing something based on a conclusory statement that it is "unlikely" exposes ratepayers to potentially significant risk. Witness Mullins agrees that it is the Commission's job to regulate rates.[254] The best approach to effectively doing so is yearly prudence reviews of CCA costs to review decision making and ensure costs with potential rate impact comport with gradualism and avoidance of rate shock.

2. The cost of compliance with the CCA should be included in the cost of dispatch to ensure economic dispatch of gas units.

96 The Commission should order Avista to include the cost of CCA compliance in the cost of dispatch of thermal resources to ensure the economic benefits of those resources are not misleadingly inflated. The risk of emissions "exce[eding] the no-cost allowances allocated to Avista, incurring both direct costs for allowances as well as costs associated with inefficient dispatch"[255] outweigh the lower surplus sales revenues[256] that will result from excluding CCA costs. Also, based on Staff's understanding, including the cost of the CCA in dispatch is the strategy most aligned with Ecology's intent in execution of the CCA.[257]

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[252] Mullins, Exh. TR at 387:3-4.
[253] Wilson, Exh. JDW-11.
[254] Mullins, Exh. TR at 390:9-11.
[255] Wilson, Exh. JDW-1TCr at 32:6-8.
[256] Wilson, Exh. JDW-1TCr at 32:4-5.
[257] Wilson, Exh. JDW-1TCr at 32:5.

97 Avista wrongly contends that inclusion of the CCA compliance costs jeopardizes "multiple opportunities for Avista to eliminate or reduce the associated allowance costs."[258] Including the CCA compliance costs in dispatch decisions associated with supplying power to Washington State does not need to impact its sales with territories outside of the CCA compliance zone. For example, Avista could easily market power from Idaho generation to, say, Oregon without including a CCA allowance adder in the bid price while at the same time setting a higher dispatch price for the same unit of power to be delivered to serve its retail customers. If the Idaho unit is uneconomic for serving Washington retail load, it could nevertheless be dispatched for sale to an Oregon customer and this portion of the lesser-of method ensures that it does not incur a CCA allowance obligation.

98 Additionally, in a situation where Avista uses out of state generation to generate power, import it to Washington, but not use that generation to serve retail load, there is still a possibility that Avista will incur a compliance obligation. Avista states that if it "sells the excess thermal output at a location in the state of Washington but the energy is not used to serve retail load in the state of Washington, then this is considered a 'wheel through' transaction which does not have a CCA carbon allowance requirement."[259] However, this is an oversimplification. If Avista generates power using a thermal resource outside of Washington and imports that power into Washington at Mid-C, then Avista is the "first jurisdictional deliverer."[260] Under Ecology's rules, "[t]he facility, supplier, or first jurisdictional deliverer that reports GHG emissions under chapter 173-441 WAC holds the compliance obligation for the covered emissions it reports unless otherwise provided in this subsection."[261]

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[258] Wilson, Exh. JDW-7 at 2 (part(e)).
[259] Wilson, Exh. JDW-7 at 2 (part(e)).
[260] WAC 173-446-040(3).
[261] WAC 173-446-040(3).

99 AWEC witness Mullins opposes Staff's recommendation to include CCA costs in dispatch decisions, but the Commission should disregard those opinions as they are largely based on his opinion that "it is not good regulatory policy for a Commission to micro-manage the business decisions of a public utility."[262] He additionally states that "[i]t is not appropriate for the Commission to put itself in the position of enforcing compliance with the CCA"[263] though he admits that the Commission is responsible for rate setting.[264] It is absolutely appropriate for the Commission to order a utility to include a regulatory cost in decision-making, as this can have a significant impact on rates. The Commission's job is to regulate utilities, and when a utility engages in behavior which has the potential to drastically impact rates in an unnecessary manner, that is the time for the Commission to step in and ensure the utility operates appropriately.

100 Additionally, witness Mullins misses a fundamental issue concerning basic market principles. When asked about uneconomic dispatch absent the inclusion of CCA costs, he provided a scenario employing Coyote Springs.[265] In that example, witness Mullins claims that exclusion of CCA costs in dispatch decisions will not lead to uneconomic dispatch "[b]ecause the alternative is market power. And market power - - unspecified power also has a compliance obligation."[266] There are several errors in this reasoning. First, is the assumption that all market power is unspecified power. Not all power generated for the market is unspecified, and indeed, the conversation around markets is so complex because of the different types of power offered and how those types comply with various states' laws. For example, non-emitting or renewable

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[262] Mullins, Exh. BGM-8T at 12:5-6.
[263] Mullins, Exh. BGM-8T at 12:6-8.
[264] Mullins, Exh. TR at 390:9-11.
[265] Mullins, Exh. TR at 380:12-381:3.
[266] Mullins, Exh. TR at 380:12-20.

power purchased with a bundled renewable energy credit, or REC. Second, and possibly more fundamentally, his assertion of uneconomic advantage. Under witness Mullins's argument the two options available are: (1) unspecified market power, and (2) Avista's gas plant. There, the price of dispatch is the marginal production cost and the CCA allowance. If both options incorporate CCA costs, an economic decision can be made, because both stand on equal ground. Now, if the Avista gas plant does not include the costs of CCA compliance, but the unspecified market power does, then Avista's gas plant has an uneconomic advantage in the market and the plant will be over-dispatched.

101 Including the cost of CCA compliance in dispatch is the best strategy to ensure that thermal resources are not ramped up and dispatched in a manner that is uneconomical and leads to the acquisition of what would be unnecessary allowances. Not including these costs in dispatch may give these resources the appearance of "least-cost," but the costs will arise later when compliance needs to be addressed. Excluding CCA costs in thermal asset dispatch that results in power being sold at retail or imported into Washington essentially makes the resource artificially cheap. These costs are not avoided, they are just pushed down the road when the price to ensure compliance may be higher.

VI. CONTESTED ADJUSTMENTS AND THE BALANCING ACCOUNTS

102 Staff contests Avista's incentive pay, the proper deferred cost of capital for various power purchase agreements, and various aspects of Avista's wildfire and insurance balancing accounts with the company or other parties. The Commission should accept Staff's recommendations, which have a sound basis in statutory law and regulatory policy.

A. The Commission Should Reject Avista's Pro Forma Incentive Expense

103 Believing that its restated incentive pay would understate its expense, Avista seeks to pro form into its revenue requirement a combined $1.6 million ($1.2 million for electric, and

$0.4 million for natural gas) that it "is forecasted to incur" in the rate years.[267] The Commission should reject that adjustment.

104 Avista's incentive adjustment involves neither known events nor measurable amounts, making it inappropriate for inclusion within the company's revenue requirement.[268] Avista offers no evidence that the relevant employees will certainly meet the criteria for incentive payments, and recent years suggest that there is a good chance that they will not.[269] Avista also offers no concrete evidence of any expense; indeed, the relevant testimony refers to the adjustment as Avista's "forecast[]" of its rate year expense. That is not "measurable," as the Commission's rules use that term.[270]

105 Avista maintains that Staff must support the adjustment as known and measurable because Staff agrees that the related labor contract adjustment meets that standard.[271] While there may be a relationship between the dollar amount of an individual's incentive pay and the contracts Avista has with its labor partners,[272] that relationship sheds no light on whether an employee will meet the criteria for payment, and thus no light on the ultimate size of Avista's incentive expense. The Commission should reject the adjustment.

B. The Commission should authorize Avista to defer its cost of capital at its authorized cost of debt for CETA-qualifying PPAs

106 The parties contest the appropriate deferred cost of capital under RCW 80.28.410(2)(b). Avista seeks the top end of the range, its proposed rate of return of 7.61 percent.[273] Staff, seeing no justification for anything other than the low end of the range, recommends Avista's

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[267] Schultz, Exh. KJS-1T at 65:8-13.
[268] WAC 480-07-510(3)(c)(ii).
[269] Hillstead, Exh. KMH-1T at 14:15-21.
[270] WAC 480-07-510(3)(c)(ii).
[271] Schultz, Exh. KJS-5T at 52:16-17.
[272] Schultz, Exh. KJS-5T at 52:11-12.
[273] Kinney, Exh. SJK-1T at 49:11-20.

authorized cost of debt of 4.93 percent. NWEC recommends either no return or the authorized cost of debt.

107 In RCW 80.28.410,[274] the Legislature authorized utilities to defer certain costs. One is the cost of capital, and the Legislature empowered the Commission to pick a value for the deferred cost of capital from a range that spans the spectrum between the company's authorized cost of debt and its authorized rate of return.[275] The Legislature's provision of that range has two consequences.

108 First, NWEC cannot square its request that the Commission reject any deferred cost of capital with the plain language of the statute. NWEC witness Gehrke argues that the statute is permissive, and it is, but not in the way he claims. The Legislature provided that a utility "may" defer certain costs for the Commission's later consideration.[276] Avista elected to defer

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[274] RCW 80.28.410 provides, in full:
(1) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with major projects in the electrical company's clean energy action plan pursuant to RCW 19.280.030(1)(l), or selected in the electrical company's solicitation of bids for delivering electric capacity, energy, capacity and energy, or conservation. The deferral in this subsection begins with the date on which the resource begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed thirty-six months. However, if during such a period the electrical company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such a proceeding. Creation of such a deferral account does not by itself determine the actual costs of the resource or power purchase agreement, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding.
(2) The costs that an electrical company may account for and defer for later consideration by the commission pursuant to subsection (1) of this section include all operating and maintenance costs, depreciation, taxes, cost of capital associated with the applicable resource or the execution of a power purchase agreement. Such costs of capital include:
(a) The electrical company's authorized return on equity for any resource acquired or developed by the electrical company; or
(b) For the duration of a power purchase agreement, a rate of return of no less than the authorized cost of debt and no greater than the authorized rate of return of the electrical company, which would be multiplied by the operating expense incurred by the electrical company under the power purchase agreement.

[275] RCW 80.28.410(2)(b).
[276] RCW 80.28.410(1).

costs here.[277] Once the company chose to do so, the only question with regard to the cost of capital was its appropriate measure.

109 Second, the Commission has discretion in determining the appropriate deferred cost of capital. Because the company bears the burden of showing that its proposed rates are fair, just, reasonable, and sufficient,[278] it bears the burden of justifying any deferral other than the minimum allowed (its authorized cost of debt).[279] Avista in its opening testimony offered nothing on that score,[280] and on rebuttal only offered vague statements that allowing Avista to defer the full authorized rate of return would further CETA's goals.[281] Maybe, but the Legislature apparently believed that allowing deferral of the authorized cost of debt would as well.[282] Avista needed to explain why the former was better than the latter here, but did not. With nothing really from the company to go on, the Commission should accept Staff's recommendation and allow the company to defer the cost of capital for the PPAs at Avista's authorized cost of debt.

C. The Commission Should Approve Continuation of Avista's Insurance Balancing Account, With the Adjustments Proposed by Avista and the Reporting Requirements Previously Attached

110 Avista requests that the Commission approve: (1) a continuation of its insurance balancing account,[283] (2) an increase in the balancing account's baseline,[284] and (3) a carrying charge on the current deferred balance and any future deferrals.[285] Staff supports that

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[277] Kinney, Exh. SJK-1T at 49:11-20.
[278] RCW 80.04.130(4).
[279] RCW 80.28.410(2)(b).
[280] *See* Kinney, Exh. SJK-1T at 49:11-20.
[281] Andrews, Exh. EMA-6T at 52:1-8.
[282] *See* RCW 80.28.410(2)(b).
[283] Andrews, Exh. EMA-1T at 24:20-25:5.
[284] Andrews, Exh. EMA-1T at 24:20-25:5. Avista specifically seeks to increase the baseline from $8.271 million to $12.795 million for electric operations and from $1.746 million to $2.247 for natural gas operations.
[285] Andrews, Exh. EMA-1T at 33:12-18.

recommendation based on its look into the insurance market, which continues to be incredibly volatile.[286]

111 AWEC opposes the balancing account as "a single-issue ratemaking mechanism that allows Avista dollar-for-dollar recovery of insurance expense, thereby removing the Company's incentive to seek out, negotiate, and attain the best insurance at the lowest costs."[287] Staff agrees that the Commission should limit the number of single-issue ratemaking mechanisms,[288] but disagrees with AWEC's application of that principle here. As just noted, the insurance market has become incredibly difficult for companies,[289] and the reporting required by the Commission ensures that the parties can verify that Avista is taking all efforts to minimize its insurance costs, whether it has an incentive or not. The Commission should allow Avista to continue the account, adjust the baseline, approve the carrying charge, and continue in effect the reporting requirements for the account.[290]

D. The Commission Should Continue Avista's Wildfire Balancing Account, With Modifications

112 Avista proposes to update its Wildfire Balancing Account baseline,[291] and also that the Commission approve a carrying charge for the account's balances.[292] Staff takes no issue with either proposal, but recommends that the Commission order Avista to do two things: (1) move costs not strictly and exclusively related to mitigating wildfire risk out of the balancing account and into base rates; and (2) report on its experience with grid hardening.[293]

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[286] Erdahl, Exh. BAE-1T at 30:10-32:8.
[287] Mullins, Exh. BGM-1T at 64:20-65:1.
[288] *See* Mullins, Exh. BGM-1T at 64:17-20.
[289] Erdahl, Exh. BAE-1T at 30:10-32:1.
[290] *See* Andrews, Exh. EMA-6T at 37:13-38:6 (agreeing to continue reporting on measures Avista has taken to minimize insurance costs).
[291] Andrews, Exh. EMA-1T at 19:4-6. Specifically, Avista requests that the Commission increase the baseline from $5.1 million to $8.3 million. *Id.*
[292] Andrews, Exh. EMA-1T at 24:1-17.
[293] Erdahl, Exh. BAE-1T at 27:12-19.

113 The company appears to accept Staff's recommendation to report on grid hardening, but rejects the idea of moving costs out of the tracker based on two arguments.[294] The Commission should reject both arguments.

114 First, Avista contends that the tracker acts as protection for customers and the company in case wildfire costs vary from planned costs.[295] That argument proves too much: the company could say the same for any cost – a tracker would provide dollar-for-dollar recovery or refund for any deviation between actual costs and what is built into rates. But the Commission does not allow for a tracker for every cost, and it should not, given the incentive distorting effects noted by M. Mullins.[296]

115 Second, Avista rejects any characterization of its "Wildfire Plan, efforts, focus, and expedited actions" as typical.[297] Staff does not characterize them as such. Staff's recommendation is to remove non-wildfire-specific costs from the tracker,[298] leaving in the tracker costs incurred specifically needed to address wildfire dangers, such as expedited vegetation management or undergrounding facilities in high-risk areas.[299] That recognizes that many of the costs Avista is recovering through the tracker are providing shared benefits, such as those incurred generally for reliability.

VII. RATE DESIGN

116 Avista initially proposed to increase its basic charge for residential electric service from $9 to $15 in the first rate year, then to $20 in the second.[300] It also proposed increased the basic charge for residential natural gas service from $9.50 to $15 in the first rate year, then to $20 in

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[294] Andrews, Exh. EMA-6T at 30:12-32:22.
[295] Andrews, Exh. EMA-6T at 31:2-10.
[296] Mullins, Exh. BGM-1T at 64:20-65:1.
[297] Andrews, Exh. EMA-6T at 31:11-12.
[298] Erdahl, Exh. BAE-1T at 27:14-16.
[299] Erdahl, Exh. BAE-1T at 28:1-10.
[300] Miller, Exh. JDM-1T at 32:1-11.

the second.[301] The Commission should reject those proposals and instead accept Staff's proposal for a $1 increase to each basic charge.

117 Staff engaged in significant discovery and could not validate the company's claims with regard to the components of the basic charge.[302] Instead, Staff determined that the components of Avista's electric basic charge summed to $10.93 and its natural gas components added to $18.60. Accordingly, given what it could validate, and background principles of gradualism, Staff recommended a $1.00 increase to the basic charges.[303] The company accepts that proposal on rebuttal.[304] The Energy Project, Public Counsel, and NWEC do not.

118 The Commission has described the principle that it should set the basic charge to recover "direct customer costs" as "long-accepted."[305] Staff's proposed increase simply matches that principle with the numbers found in the company's books. And the MYRP statute contains low-income assistance provisions that should address the concerns raised by TEP, NWEC, and Public Counsel.[306] The Commission should adopt Staff's modest increase.

VIII. DISTRIBUTION PLANNING

119 Staff has identified several deficiencies in Avista's distribution planning process, including inconsistencies with state policy and regulations concerning distribution planning and the treatment of distributed energy resources (DERs). Because Avista has not adequately complied with its distribution planning obligations, Staff cannot agree with the company that the distribution system investments included in this MYRP meet the threshold prudency requirement and are in the public interest. In order to ensure the continuity of service and to

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[301] Miller, Exh. JDM-1T at 34:1-8.
[302] Hillstead, Exh. KMH-1T at 26:7-15.
[303] Hillstead, Exh. KMH-1T at 27:4-28:10.
[304] Miller, Exh. JDM-8T at 12:19-13:6.
[305] *PacifiCorp*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, at 91 ¶ 216.
[306] RCW 80.28.425(2).

avoid disruptions that could negatively impact customers, however, Staff recommends that the Commission provisionally allow the costs of these investments be included in rates, subject to two conditions discussed below. These conditions would cure the infirmities plaguing the company's distribution planning process and bring it into compliance with the relevant planning requirements, thereby providing Staff a sufficient evidentiary basis on which to determine the prudency of Avista's distribution investments.

120 Avista has included an enormous amount of distribution system investments in this rate case. Distribution investments account for $50 million of the $96 million total provisional plant capital additions for calendar year 2025.[307] For calendar year 2026, distribution investments account for $107 million out of $227 million total.[308] Avista has made these investments amidst the backdrop of a regulatory environment that has clearly signaled the Legislature's disposition in favor of investment in a modern grid that is flexible, resilient, and DER-ready. For instance, in meeting its obligations under CETA, an electric utility must take measures to "[p]ursue all cost-effective, reliable, and feasible conservation and efficiency resources and demand response;" "[m]aintain and protect the safety, reliable operation, and balancing of the electric system;" and "[e]nsure that all customers are benefiting from the transition to clean energy through . . . [e]nergy security and resiliency."[309] The Legislature has also stated that it is state policy that electric utilities should engage in distributed energy resource planning processes that provide, at a minimum "a ten-year plan for distribution system investments and an analysis of nonwires alternatives for major transmission and distribution investments as deemed necessary by . . . the commission."[310] Furthermore, CETA requires that "utilities

[307] Atitsogbe, Exh. SSAG-3 at cell AG-93.
[308] *Id.* at cell AN-93.
[309] WAC 480-100-610(4).
[310] RCW 19.280.100(2)(e).

making investments in new resources after May 2019, rely on energy efficiency, demand response, renewable resources, and energy storage to the maximum extent feasible, while transitioning away from coal and natural gas-fired generation."[311]

121 Despite this new regulatory framework, Avista has not taken steps to demonstrate how its planned distribution system investments will work towards the Legislature's goal of a modern grid. In discovery, Staff asked the company for information regarding its process for evaluating non-wire alternatives to the new distribution and transmission system investments included in this case. In response, Avista could not provide any specific information about its process for evaluating such investments, but simply stated that it evaluates project alternatives generally and its "intent is to consider non-wire and non-pipe alternatives to new distribution and transmission system investments in an equitable manner to what are typically considered traditional project alternatives."[312] Avista further stated that non-wire alternatives are most applicable to electric system capacity related project justifications and provided seven examples of applicable business cases.[313] In analyzing these projects, however, Staff found that Avista had not actually considered a non-wire alternative to any of the listed projects. The company only mentioned non-wire alternatives in one business case, merely stating that "the preliminary evidence is showing that these options are not cost-effective or timely when compared to our traditional solutions (replacing wire/equipment)."[314] In light of the Legislature's policy statement in favor of a robust analysis of alternatives to traditional distribution investments and a more modern and flexible grid, Staff finds Avista's failure to adequately assess non-wire alternatives to be a major obstacle in establishing the prudency of

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[311] LAWS OF 2023, ch. 200, § 1.
[312] Atitsogbe, Exh. SSAG-2 at 1.
[313] *Id.*
[314] DiLuciano, Exh. JDD-2 at 327.

these investments and its compliance with CETA and other planning requirements.

122 Avista did propose three projects in this case which it asserts will prepare its system to accommodate DERs, however, these projects also suffer from prudency concerns. First, only one of the three projects was actually included in the company's initial filing. That project is the Outage Management System and Advanced Distribution Management System project. Staff agrees with Avista that this project is an important step towards improved DER management and demand response. However, the project is not planned for completion until 2028, leaving considerable concern over when Washington ratepayers will see the benefits yielded by this investment.[315]

123 As for the other two DER-related projects, Staff did not learn of their existence until conducting discovery in this case and still has concerns about details of the investments and the benefits they will provide. These projects are the Solar Plus Storage Microgrid Project and the Connected Communities Program.[316] Once again, while Staff agrees with these efforts to integrate DERs into the grid, the projects suffer from a lack of information and unclear coordination with other investments in the distribution system. For instance, the Connected Communities Program is intended to allow Avista customers within the City of Spokane to actively manage their energy systems and reduce energy cost burden. The program has a service boundary coextensive with the area served by Avista's Third and Hatch Substation.[317] However, Avista included another capital addition—the Metro 115kV Substation Project, which is expected to cost $73,000,000—in this rate case that is also intended to address transmission and distribution issues at the Third and Hatch Substation.[318] Avista has not

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[315] Atitsogbe, Exh. SSAG-4 at 23-42.
[316] *See Id*. at 3-22.
[317] *Id*. at 13.
[318] DiLuciano, Exh. JDD-2 at 27-45.

explained the nature of the relationship between these projects.

124 Avista's repeated shortfalls and slow progress in meeting its DER planning requirements also indicates that its distribution planning process is deficient. WAC 480-100-620(3) provides that a utility's Integrated Resource Plan (IRP) "must include assessments of a variety of distributed energy resources" and that the Commission "strongly encourages utilities to engage in a distributed energy resource planning process as described in RCW 19.280.100." Avista did not provide an adequate DER assessment to comply with the IRP rules in its 2021 IRP or 2023 IRP update.[319] Avista points out that, since the filing of response testimony in this case, it has published the results of its DER potential assessment, which was intended to "develop reasonable estimates for new customer generation, battery energy storage, and electric vehicles on a localized basis within Avista's Washington electric service territory, and to investigate the effects of such DERs in Highly Impacted Communities or Vulnerable Population areas."[320] Staff has not yet analyzed this study to determine if it adequately meets the company's planning obligations. The timing of the publication of the study alone raises concerns with Avista's DER planning efforts, however. That Avista has completed a single DER potential study in the four years since the adoption of WAC 480-100-620(3) does not instill confidence in Avista's ability to make informed decisions on DER integration and distribution system planning generally.

125 Nor has Avista provided evidence that it has made acceptable progress towards meeting the standard set forth by the Legislature in RCW 19.280.100. Avista contends that its "[a]ctivities such as the DER Potential Assessment, deployment of smart devices with grid

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[319] *In re Avista Corporation' 2023 Electric Integrated Resource Plan Progress Report*, Docket UE-200301, Commission Staff Comments at 7-8 (Aug. 1, 2023).
[320] DiLuciano, Exh. JDD-3T at 12:14-17.

monitoring capability, advancements in utilizing Advanced Metering Infrastructure data, and continued publication of a ten-year plan" constitute examples of its progress towards meeting RCW 19.280.100's standards.[321] But this claim flounders under a modicum of scrutiny. How has Avista identified the data gaps that impede a robust DER planning process?[322] How has it engaged in advanced planning simulation tools, or explored potential cooperative efforts with other utilities in developing tools needed to obtain data that would allow it to quantify the locational and temporal value of resources on the distribution system?[323] How has it forecasted the growth of DERs on its distribution system?[324] Avista has not provided evidence that it engages in any of these efforts. Avista indicates that it publishes a ten-year plan for distribution investments consistent with the DER statute, but as discussed above, its planning process fails to include the critical element of "an analysis of nonwires alternatives for major transmission and distribution investments."[325]

126 Finally, Staff is concerned that Avista has elected to pursue these massive distribution system investments during a time when it is coming up short on energy efficiency. In the 2022-2023 biennium, Avista failed to meet its biennial conservation target, totaling 84,827 MWh of actual savings out of 106,644 MWh target savings.[326] Avista contends that the circumstances leading to this shortfall were "extraordinary and unforeseen" and that the shortfall "put no additional material strain on the Company's distribution system," but has not provided

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[321] *Id.* at 14:3-5.
[322] RCW 19.280.100(2)(a).
[323] *Id.*
[324] RCW 19.280.100(2)(d).
[325] RCW 19.280.100(2)(e).
[326] *See in re Avista's 2022-2023 Electric Biennial Conservation Plan*, Docket UE-210826, Avista's 2022-2023 Biennial Conservation Report at 3 (May 31, 2024). It is worth noting that Staff disagrees with Avista's claimed conservation achievement of 84,827 MWh, having found that the Company only achieved 73,503 MWh of actual savings. *In re Avista's 2022-2023 Electric Biennial Conservation Plan*, Docket UE-210826, Staff Memo at 3 (August 22, 2024).

evidence to substantiate these justifications.[327] And regardless of the reasons behind the shortfall, the fact of its existence constitutes additional indication that Avista has not sufficiently considered resources that might provide cost-effective alternatives to traditional distribution investments such as energy efficiency and other DERs "to the maximum extent feasible," as CETA requires.[328]

127 Avista has plainly been slow to act in adapting its distribution system to the standards of the Legislature and the Commission. Where Avista has acted, it has done so on an ad hoc basis without an overarching plan to transition to a modern and resilient grid. In doing so it has chosen to continue to invest in its traditional grid system, plagued by vulnerabilities and inefficiencies.[329] And because it has not adequately complied with the statutes and rules governing distribution planning, Avista is not able to support this decision with evidence that its investments are cost-effective and consistent with state policy and thus Staff cannot agree that its distribution investments are prudent.

128 In order to avoid financial or service disruptions that could negatively impact customers and simultaneously ensure that Avista's distribution planning processes and investments meet the standards set by the Commission and the Legislature, Staff recommends provisionally allowing Avista's distribution planning costs into rates subject to two conditions. These conditions are laid out in detail in the testimony of Staff witness Atitsogbe.[330]

129 The first condition would require Avista to annually provide financial data on its distribution investments that would allow Staff to assess the efficiency of Avista's management of its distribution system, including the incorporation of DERs into that system.

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[327] DiLuciano, Exh. JDD-3T at 17:3-14.
[328] LAWS OF 2023, ch. 200, § 1.
[329] *See* Atitsogbe, Exh. SSAG-1T at 9:1-18.
[330] *Id.* at 25:10-30:1.

The condition additionally calls for Avista to provide a five-year forecast of distribution system capital investments and operational and maintenance expenses that will allow Staff to assess whether Avista's plans are aligned with regulatory standards.

130 The second condition would require Avista to include DER and grid development-specific data and evaluations in its 2025 IRP. These include data on DERs in Avista's distribution system, a ten-year plan for distribution investments as contemplated in RCW 19.280.100(2)(e), and analyses of alternative grid development scenarios. These new inclusions to Avista's IRP will bring the Company into compliance with DER and general distribution planning requirements and will ensure it develop a modern and resilient grid that adequately supports the integration of DERs.

131 Both of these conditions are unfortunately necessary due to the deficient quality of Avista's planning filings. Staff cannot support the prudency of Avista's distribution capital additions until it has adequately complied with its planning obligations, as these planning filings provide a crucial piece of evidence in establishing the prudency of Avista's investments. Adherence with these conditions will ensure that Avista is in compliance with its planning obligations and that it provide Staff all information necessary to determine the prudency of Avista's distribution investments.

IX. CONCLUSION

132 Staff respectfully requests that the Commission issue a final order in accordance with the recommendations made above.

RESPECTFULLY SUBMITTED this 28th day of October, 2024.

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